

February 2, 2023

VIA ECF

The Honorable George B. Daniels
United States District Judge
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

The Honorable Sarah Netburn
United States Magistrate Judge
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *In re Terrorist Attacks on September 11, 2001*, No. 03-md-1570 (GBD) (SN)
Havlish, et al. v. Bin Laden, et al., No. 03-cv-9848 (GBD) (SN)
John Does 1 through 7 v. the Taliban, et al., No. 20-mc-740 (GBD) (SN)
Federal Insurance Co., et al. v. al Qaida, et al., No. 03-cv-6978 (GBD) (SN)
Smith v. the Islamic Emirate of Afghanistan, et al., No. 01-cv-10132 (GBD) (SN)
New Civil Action Against the Taliban and Da Afghanistan Bank

Dear Judges Daniels and Netburn,

On behalf of Judgment Creditors Fiona Havlish, et al., John Does 1 through 7, Federal Insurance Co., et al., and Estate of Smith, et al.—collectively, the “Joint Creditors”—we write concerning a recently filed civil action captioned *Bushnell, et al. v. Islamic Emirate of Afghanistan, et al.*, No. 22-cv-8901-JSR (S.D.N.Y.).¹ The *Bushnell* action, pending before Judge Rakoff, was filed on October 19, 2022 on behalf of more than 5,000 plaintiffs who are the victims and family members of victims of al Qaeda’s 1998 bombings of the U.S. Embassies in Kenya and Tanzania. The *Bushnell* plaintiffs have sued the Islamic Emirate of Afghanistan, the Taliban, and Da Afghanistan Bank (“DAB”), among others, seeking to establish defendants’ liability for the embassy bombings.

The Joint Creditors bring this case to the Court’s attention because—like the *Owens v. Taliban* case pending before Judge Caproni²—it appears to have been filed at least in part for the ultimate purpose of obtaining a judgment that can thereafter be used to execute against the blocked DAB assets that are the subject of the turnover litigation before this Court. The *Bushnell* complaint seeks a liability judgment against DAB itself, and specifically references the \$3.5 billion in blocked DAB assets that are subject to the ongoing turnover proceedings before this Court. *See* Compl., Ex. A, ¶ 111. The *Bushnell* plaintiffs did not bring claims against DAB or the Taliban until 24 years after the embassy bombings, after the Joint Creditors obtained writs of execution

¹ The *Bushnell* complaint is attached hereto as Exhibit A.

² *See* No. 22-CV-1949-VEC (S.D.N.Y.).

over the DAB assets. They did not previously bring their claims against DAB or the Taliban even though a number of them obtained judgments against other defendants (such as Iran) many years ago. In addition, they did not file their claims against DAB or the Taliban until after Magistrate Judge Netburn rejected an attempt by approximately 600 of the *Bushnell* plaintiffs to intervene in the Havlish Creditors' turnover proceeding directed at the DAB assets. (Included among the 5,000-plus *Bushnell* plaintiffs are the roughly 600 *Amduso* plaintiffs whose motion to intervene was denied by Judge Netburn in February 2022.) See MDL Dkt. 7696 (order); MDL Dkt. 7773 (Havlish Creditors' response to Objections)).³ The *Amduso* plaintiffs' objections to Magistrate Netburn's order remain pending.

The Joint Creditors are not asking this Court for any relief at this time. They nonetheless wish to note the possibility that the *Bushnell* action could complicate this Court's ongoing adjudication of collection proceedings against the DAB assets. At the April 26, 2022 conference that Your Honors convened, this Court made clear its view that the 9/11 MDL court is "the only forum that exists to resolve" issues concerning the status of the blocked DAB assets. See Apr. 26 Tr., MDL Dkt. 7966, at 14; see also *id.* at 39. Judge Daniels, discussing the *Owens* case, stated that "[t]here's no reason to believe that there's any concern that these issues are going to be resolved somewhere else before they're resolved here." *Id.* at 14. The *Bushnell* action could also, if it results in a default judgment prior to this Court's resolution of the pending turnover motions, complicate the possibility of a financial recovery for the Joint Creditors and the approximately 10,000 9/11 victims who stand to share in that recovery under the Framework Agreement. In sum, because the *Bushnell* plaintiffs are pursuing the DAB assets outside of the MDL, the Joint Creditors felt it prudent to advise the Court of the *Bushnell* plaintiffs' efforts.

The Joint Creditors thank the Court for its consideration and are prepared to keep this Court apprised of any pertinent developments in the *Bushnell* action.

³ The *Bushnell* and *Amduso* plaintiffs are also represented by substantially the same counsel. Only one of the six firms representing plaintiffs in the *Bushnell* action was not counsel on the *Amduso* intervention motion, and only one of the six firms representing the plaintiffs on the *Amduso* motion is not counsel in *Bushnell*.

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Respectfully submitted,

/s/ Lee Wolosky

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cc: All counsel of record (by ECF)